

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

Rush University Medical Center

Employer

and

Case 13-RC-21439

Health Care, Professional, Technical, Office,
Warehouse and Mail Order Employees Union,
Local 743, International Brotherhood of Teamsters

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing on this petition was held on before a hearing officer of the National Labor Relations Board, herein referred to as the Board, to determine whether it is appropriate to conduct an election in light of the issues raised by the parties.¹

I. Background and Issues

The Employer operates an acute care hospital and medical center. The Petitioner currently represents a non-conforming bargaining unit comprised of approximately 765 of the Employer's non-professional service and maintenance employees. In the instant matter, the Petitioner seeks to represent the balance of the Employer's non-professional employees in a separate residual unit comprised of about 700 employees in 40 job classifications. The parties stipulated to the inclusion of 37 of these forty positions.²

¹ Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. The labor organization involved claims to represent certain employees of the Employer.
- d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

² At hearing the parties stipulated to the inclusion of an additional position, that of Bakers in any unit found appropriate. Additionally, the parties stipulated to the exclusion of eleven positions including Telecom Operators, Per Diem Operators and Customer Service Representatives working in the Employer's Triangle Office Building.

The three classifications in dispute are Patient Access Coordinator (hereafter “PAC”); Hospitality Host (hereafter “Host”); and Patient Care Technicians, grades I and II (hereafter “PCT” and “PCT II” respectively). The Employer takes the position that PACs are business office clericals, and that Hosts and PCTs are technical employees and therefore none of the three classifications are properly included in the petitioned for non-professional unit under the Board’s Health Care Rule. The Petitioner takes the position that all three classifications are non-professional employees and are properly included in the petitioned-for unit.

II. Decision

For the reasons discussed below, I find Patient Access Coordinators to be business office clericals and therefore exclude that classification from the Unit. I further find that Hospitality Hosts and Patient Care Technicians do not constitute technical employees and are therefore properly included in the unit.

Further, the Board has long held that it will not entertain an incumbent’s petition for a separate residual unit in the face of an already existing non-conforming unit. *St. John’s Hospital*, 307 NLRB 767, 768 (1992); *Budd Co.*, 154 NLRB 421, 428 (1965); *McKeesport Hospital*, 220 NLRB 1141 (1975). Rather, an incumbent union wishing to represent employees residual to those in its existing unit must do so by adding them to the existing unit usually by means of a self determination election. *St. John’s Hospital, supra*. Accordingly, I shall direct that the residual group of employees sought by Petitioner in the instant petition as amended at hearing, but excluding Patient Access Coordinators be allowed to vote in a self-determination election to decide whether they wish to be included in the already existing unit.³

Accordingly, IT IS HEREBY ORDERED that the following group of employees shall be allowed to vote in a self-determination election to decide whether they wish to be included in the current collective bargaining unit represented by the Petitioner:

³ At hearing the parties stipulated that the description of the Union’s existing bargaining unit listed in the parties Recognition Clause of their current collective bargaining agreement which was admitted in evidence during the underlying hearing was under inclusive. The instant record is devoid of evidence describing specifically which classifications were not listed in the Recognition Clause and are included in the existing bargaining unit. The Recognition clause described the existing unit as follows: “All environmental aides, environmental specialists, environmental technicians, dietary workers, laundry workers, transport specialists, elevator operators, maintenance employee, central service technical assistants, nursing attendants, psychiatric aides, community health aides, lab helpers, operating room attendants, mail room clerks, unit clerks, geriatric technicians, patient service associates (PSAs), physical therapy aides, rehabilitation aides, pediatric assistants, pediatric nursing assistants, certified nursing assistants (CNAs), truckdrivers (laundry & SPD), food service assistant I lead, food service assistant II lead, environmental specialist lead, transport specialist lead and journeymen lead. The unit specifically excludes supervisors, temporary and casual employees, regular part time employees normally working less than seventeen (17) hours per week and all other employees of the Hospital”.

All full-time and regular part-time non-professional employees working seventeen (17) or more hours per week, including Admitting Guides, Bakers, Buspenders, Cashiers, Central File Clerks, Clerical Coordinators, Clerks, Clerk Typists, Clinic Coordinators, Cooks, Coordinators for Bed Control, Coordinators for Radiology Imaging, Customer Service Representatives other than those working in the Employer's Triangle Office Building located at 1700 W. Van Buren, Dietary Clerks, Doormen, Drivers, Emergency Room Clerical Coordinators, Film Coordinators, Gift Shop Salespersons, Hazardous Waste Technicians (including Senior Hazardous Waste Technicians), Health Information Management Clerks, Health Information Management Technicians, Hospitality Hosts, Input Clerks, Inventory Controllers, Material Handlers, Member Services Representatives, Operating Room Dispatchers, OR SPD Technicians, Orthopedic Orderlies, Patient Care Technicians, Patient Coordinators, Personal Care Aides, Purchasing Assistants, Radiology Patient Coordinators, Receptionists, Referral Coordinators, Registrars (including Senior Registrars); Registration Representatives, Schedule Coordinators, Schedulers, Secretaries, Stock Clerks; and Waitresses employed by the Employer at the main campus of Rush University Medical Center, located at 1653 West Congress Parkway, Chicago, Illinois and at the Ogden Warehouse located at 401 Ogden, Chicago, Illinois.

Excluding all temporary and casual employees, Telecom Operators, Per Diem Operators, Customer Service Representatives working at the Employer's Triangle Office Building, physicians, patient access coordinators, registered nurses, professionals, technical employees, skilled maintenance employees, business office clerical employees, confidential employees (including Clerical Coordinators in the Employment Services Department, Clerical Coordinator in the Environmental Services Department, Clerk in Compensation and Benefits Administration, Secretary in the Security Department, and Secretary in the Office of Legal Affairs), guards, and supervisors as defined by the Act.

Inasmuch as I have directed a self determination election in a residual group of employees rather than an election in a separate unit as sought by the Petitioner, the Petitioner is permitted to withdraw the instant petition without prejudice upon written notice to me within 10 days from the date of this decision or, if applicable, from the date the Board denies any request for review of the unit scope findings in this decision. *Independent Linen Service Company of Mississippi*, 122 NLRB 1002, 1005.

III. DISCUSSION

A. Patient Access Coordinators (PACs) constitute Business Office Clericals and are not properly included in the Unit.

In the Board's rulemaking proceedings, the Board recognized the distinction between business office clericals and other types of clericals. 53 FR 33924-33926, reprinted at 284 NLRB 1562 – 1565. The Board noted that business office clericals perform distinct functions: handling finances and billing and dealing with Medicare, Medicaid, and other reimbursement systems.

In the instant case, PACs perform pre-registration and pre-admission duties for incoming patients. In this regard, the record in the instant case demonstrates that a primary duty of the Employer's PACs is to "secure the accounts" of patients for payment which is critical to the Employer's financial and billing process. PACs have no responsibility for a patient's physical or environmental health. The PAC's ultimate goal is to ensure that the Employer is paid for services rendered to the patient. PACs are responsible for the first step in that process. Thus, PACs are responsible for confirming a patient's insurance information, obtaining authorization for patient services from payors, and notifying appropriate party payors, providers or external pre-certification organizations of registration for out patient visits and in-patient admissions.⁴ In performing these duties, PACs are required to regularly on a daily, and in some cases, hourly basis contact the "payors" (insurance, government agencies, etc.). PACs must determine whether a particular medical service is covered by insurance, what the covered benefits are, if there is a deductible and/or co-pay and whether there are any other terms or restrictions which need to be accounted for to secure payment.

Additionally PACs are required to communicate to the patient the hospital's policy on pre-payment of services; identify significant patient financial liabilities; refer all patients identified through the Employer's "Bad Debt Indicator" computer program as a debt risk, to the Employer's financial counselors; and identify and verify government payors via the Employer's on-line computer based system. Significantly, PACs are responsible for completing Medicare Secondary Payor Questionnaire for all Medicare eligible patients. Additionally PACs are required to notify payors or external pre-certification organization of services and admissions; communicate to the patient the hospital's policy on pre-payment of services when significant patient liabilities are identified; accept payments and accurately complete a receipt for payment; complete daily and weekly volume/productivity management reporting for admitted patients; verify eligibility and obtain benefits quotes for all non-governmental, manually accessed payors; re-verify all patients who remain in-house after thirty days from admission and continue re-verification every thirty days until discharge; identify potential and repeat/recurring bad debt patients and refer patient to Financial Counselor; and release patient bills upon completion of error free account for approved bill holds.

PACs use a computer to input billing information received from patients into the Employer's Patient Care Information Systems data base (PCIS). No other employee classification is authorized to use the computers utilized by PACs. This begins the automated billing process for the hospital. Mistakes in inputting this information may and have resulted in the Employer not being paid.

A group of about 40 PACs work in a separate and distinct office building referred to in the record as the Jelke building which is located on the Employer's hospital campus. No patient care is performed in this building. The remaining PACs work at various

⁴ In addition to insurance and payment information PACs gather personal information from the patient including patient's name, address, social security number and reason for the visit to the hospital. This information is utilized both to generate bills for subsequent services as well as beginning the admission tracking process for the patient as they go through the hospitals system.

“ports of entry” throughout the Employer’s facility. These areas include the emergency room and various clinics where patient services are provided. PACs working in the Jelke building have no face to face contact with patients. Rather, they perform their pre-admission work over the phone. PACs working at the various ports of entry meet face to face with incoming patients to register them and get their financial information. These PACs perform these duties in distinct areas set apart from the actual areas in which medical care is given. Specifically, PACs working at the ports of entry have separate office cubicles located outside the patient areas which are screened from the clinical area in order to ensure privacy.

PACs working in the Jelke building have no contact with employees currently represented by the Union, working instead with clerical employees. PACs working at the ports of entry throughout the Employer’s facility have only limited and incidental contact with employees currently represented by Petitioner. As set forth in the record, this limited contact included instances wherein PACs assigned to the admitting or emergency department would call transporters, who are currently represented by Petitioner, to pick up and move non-ambulatory patients, or might have occasion to communicate with unit clerks when there were last minute changes in admission data. The only other instance of contact with unit employees would be the occasions where housekeeping personnel represented by Petitioner might be in an area cleaning while the PAC in the area was performing their duties.

PACs are employed in the Employer’s Healthcare Finance Department under the general direction of Kevin Harper, Director of Patient Access.⁵ PACs are directly supervised by Olivia Leftridge, Manager of Admitting and Registration; Patricia Sanford, Manager of Emergency Department Patient Access and OB Patient Access and Audrey Lovett, Assistant Director.

PACs are required to possess a high school diploma, typing skills and preferably comparable billing/insurance experience in a hospital environment, doctor’s office or related experience working for an insurance company. After being hired, PACs receive their own unique training in the Employer’s computer system and the insurance related functions of their job. PACs are periodically assigned to observe the work of the Employer’s billers and collectors in order to better understand their job requirements in gathering proper and sufficient information to “cut a clean bill”. Most PACs work a day shift that corresponds to the Employer’s office business hours. PACs assigned to work in clinical areas work the same hours that such clinics are open. PACs assigned to the emergency room work shifts scheduled around the clock.

PACs are paid an hourly wage rate between \$13.93 to \$20.45, Grade 8 of the Employer’s pay scale for non union employees. Unit clerks represented by Petitioner are paid between \$10.50 to \$15.55. Additionally, PACs are eligible to receive monthly bonuses available only to employees in the Healthcare Finance Department based on the department’s monthly performance and specific performance of each individual PAC as measured by random and

⁵ Other hourly employee classifications working in this department and ultimately reporting to Kevin Harper include receptionists, bed controllers, financial counselors and registration specialists. None of those classifications are currently represented by the Petitioner.

regular monitoring by PAC supervisors. High performers are eligible for an additional \$50 cash bonus. Additionally PACs are eligible to receive annual bonuses based on their individual performance. Employees currently represented by the Petitioner are not eligible for these bonuses.

Under the Board's guidelines set forth in its rule-making decision for acute care hospitals, the Board concluded that business office clericals (hereafter "BOC") constituted a separate appropriate unit apart from broader non-professional service and maintenance units. 53 FR 33924-22926, reprinted at 284 NLRB 1516, 1562-1565 (1987). In so finding the Board noted that BOCs perform substantially different functions from those of other employees. Thus, BOCs are primarily responsible for a hospital's financial and billing practices, "deal with Medicare, DRGs, varying price schedules, multiplicity of insurance types and new reimbursement systems" and are not responsible for the patients' physical or environmental health. *Supra*.

Utilizing the Board's criteria, the Employer's PACs are clearly business office clericals. As noted above, PACs primary responsibility is to secure payment for medical services on behalf of the Employer. In so doing, PACs regularly are required to "deal with Medicare" and a myriad of insurance types and reimbursement systems. PACs have no responsibility for a patient's physical or environmental health.

In its rule making, the Board further noted that BOCs typically are required to have a higher level of education, are separately supervised, work in separate areas and have distinct bargaining interests from those of other non-professional employees such as service and maintenance employees. These distinct bargaining interests include pay equity, performance monitoring, and productivity standards. 284 NLRB 1528, 1562-1565. In the instant case PACs are required to have a high school diploma and specific clerical skills; they receive formal training on identifying payers and using the Employer's computer software program; are supervised within the Employer's Healthcare Finance Department and tend to be isolated from other non-professional employees. Thus, as noted previously, a significantly large group of PACs work in the Jelke Building, and have no regular business contact with employees represented by the Petitioner. The remaining group of PACs who work at various entry points throughout the Employer's facility work at enclosed work stations which tend to isolate them from other unit employees. Additionally, the work performed by PACs located throughout the facility is unrelated to the specific medical or patient care functions performed in such locations. Finally, PACs appear to have separate bargaining interests from other non-professional employees represented by the Petitioner including receiving higher wages than unit clerks represented by Petitioner, and PAC's eligibility for performance driven bonuses which are not available to Unit employees. Based upon the foregoing, I find that PACs are business office clericals and shall exclude them from the unit.⁶

⁶ In its brief the Petitioner cites a number of cases wherein the Board found the employees at issue therein to be "hospital" rather than "business office clericals". However, none of these cases are on point inasmuch as each is fundamentally distinguishable from the instant matter. Thus, in *Newington children's Hospital*, 217 NLRB 793 (1975) the Board found employees at issue not to be business office clericals (BOC) because their work and working conditions were materially related to the clinical work of the unit to which they were assigned. Such is not the

B. Neither Hospitality Hosts nor Patient Care Technicians are technical employees.

As previously noted, the Employer maintains that its Hospitality Hosts and Patient Care Technicians must be excluded from the Unit because they are technical employees. Record evidence does not support this position.

The Board in *Barnett Memorial Hospital Center*, 217 NLRB 775 (1975) stated the following test for determining the definition of a technical employee: "...we apply the Board's standard criteria that technical employees are those who do not meet the strict requirements of the term professional employee as defined in the Act but whose work is of a technical nature involving the use of independent judgment and requiring the exercise of specialized training usually acquired in colleges or technical schools or through special courses." Subsequently in its Healthcare Rule making process which resulted in promulgation of the Board's Healthcare Rule, the Board confirmed that technical employees are those employees who perform jobs involving the use of independent judgment and specialized training as contrasted to employees who generally perform unskilled tasks and need only a high school education. During its rulemaking hearings, the Board specifically noted that health care technical employees have significant additional education and/or training beyond high school including community college associate degree programs which provide math and science background beyond that which high schools offer; ...programs at accredited schools of technology and in some fields a full 4 year college degree. The Board further noted that most hospital technical employees are either certified (usually by passing a national examination), or licensed, or required to register with the appropriate state authority. **29 C.F.R. 103.30(a); 284 NLRB 1527, 1553 (1988); 284 NLRB 1516 at 1553 (1987).**

i. Hospitality Hosts:

At the time of hearing, the Employer employed eight full-time and one part-time Hosts. Hosts are not required to have any advanced degree, specialized training, license or certification. According to the Employer's job written job description, Hosts should have "experience and knowledge of health care food service and working in a customer service oriented environment." Additionally Hosts should possess basic computer skills and math ability. Only one of Employer's full time Hosts possessed any formal post secondary education.⁷ However, there are no tasks or skills performed by any Host with post-secondary education that cannot be done by Hosts with only a high school education.

case in the instant matter. In *Rhode Island Hospital*, 313 NLRB 343 (1993) also cited by Petitioner, employees found not to be BOCs had no responsibility for handling finances, billing and dealing with Medicare apart from gathering information and "contacting insurers" unlike PACs in the instant case who spend a significant portion of their time performing these functions. *William W. Backus Hospital*, 220 NLRB 414 (1975) and *Jewish Hospital Ass'n of Cincinnati*, 223 NLRB 614 (1976) and *Duke University* 226 NLRB 470 (1976) are similarly distinguishable.

⁷ This individual, Yolanda Fields possessed a two year degree. However her job duties and pay grade were identical to all of the Employer's other full time hosts.

Hosts receive “on the job” training. Recently Hosts participated in patient education training which took place at the Employer’s facility once a week for two hours per session over an eight week period. Hosts may periodically attend “refresher” sessions.

Hosts’ primary responsibility is to ensure that patients are satisfied with their meals. Additionally Hosts are responsible for initial nutritional screening of patients and explaining to patients specific diets prescribed for them by physicians and licensed dietitians.

In regard to their nutritional screening duties, the record established that the process begins with the Host visiting each patient in the patient’s room within 24 hours of admission. During this meeting the Host discusses the patient’s diet, gets food preferences and may obtain the patient’s height and weight. The Host is instructed to ask whether the patient has lost weight recently, calculate the patient’s weight as a percentage of an ideal body weight, determine whether the patient is interested in nutrition counseling and record this information in a Patient Admission Assessment form. If a patient has had a recent weight loss, or is at or below 85% of ideal body weight, the Host enters that data in the Employers CBORD computer system signaling that the patient’s progress needs to be followed by a hospital Dietitian. If the patient is not referred to a Dietitian, the Host enters data identifying the patient as one who will need nutritional assessment in seven days.

During the screening process, Hosts determine whether patients want or need “nourishment,” which are snacks that supplement regular meals. Some patients require them because of a medical condition, such as diabetes. Hosts are provided with a chart from which they can order nourishments suitable for particular diets, such as low-sodium or low-cholesterol diets. Hosts review with patients the appropriate nourishment and enter patient food orders via the computer.

Hosts are also responsible for educating patients on nutrition by describing and explaining the diets on which they have been placed. Hosts do not actually determine the types of diets on which patients are placed. Patient diets are set by physicians or other professionals. Hosts complete and sign a Patient Education Record identifying the teaching method utilized, either by virtue of demonstration, oral instruction, written instruction or video; rating the patient’s readiness to learn and outcome of the process. The completed form is maintained as part of the patient’s door-side chart. The patient’s menu selections are also entered into the computer which automatically checks to confirm that those selections are consistent with any dietary restrictions.

Hosts are also responsible for screening infants and children. This process requires a separate pediatric Admission Assessment form. In this regard, nutritional screening information is recorded on the second page of the form and includes the patient’s date of birth; length or height, weight, head circumference, and percentiles corrected if necessary for gestational age; ideal body weight and percent of ideal body weight; formula type (for infants) and appetite; and evidence of thirst or dehydration. Hosts are provided with information on how to convert length and weight into metric system equivalents and with growth charts to determine and plot percentiles. The Assessment form is placed in the patient’s nursing station medical record.

Hosts are also responsible for screening elderly patients receiving long-term care at the Employer's facility. In this regard, Hosts complete a Clinical Nutrition Assessment form in conjunction with a Dietitian who retains the form. Hosts are responsible for obtaining information from the patient regarding their height, weight and significant weight changes. In addition to seeking this information directly from the patient, Hosts may review the patient's door-side chart to ascertain medication and lab result information.

Patients screened by Hosts who are determined to be at risk for malnutrition are identified for prompt follow-up by a Dietitian. To accomplish this, the Host completes a Nutrition Assessment form. The form requires objective information such as the patient's weight change, ideal body weight and percent of ideal body weight, nutrition history information such as whether the patient has chewing or swallowing difficulties or food allergies. Data from the form is entered by the Host in the CBORD computer data base. This data is regularly reviewed by the Host's supervisors for accuracy. When errors are detected, patient information is adjusted accordingly.

Patients not at risk for malnutrition are reassessed by Hosts at seven day intervals during their hospital stay. Hosts fill out a Clinical Nutrition Reassessment Note recording any significant change in the patient's nutritional status, such as weight loss or poor nutrition intake. Hosts assess the possible causes of weight loss by reviewing the patient's nursing chart which shows the percentage of meals consumed during the preceding week, inquiring of the patient whether a change in the supplemental nourishments is desired, and checking the patient's medication. The Host completes the form by indicating whether the patient should be referred to a Dietitian, needs diet counseling, needs a change in nourishment or whether a calorie count should be started. The form becomes part of the patient's nursing station record and the Host enters this information into the CBORD computer.

In addition to nutritional screening, Hosts perform daily meal rounds, usually in conjunction with the lunch meal. Hosts perform meal rounds to determine how well a patient is eating, to offer substitute menu items where appropriately requested, to assure that the patient is receiving the food items ordered at a suitable time, and to answer patient questions about their diets. Such information is entered into the CBORD computer by the Host.

On occasion Hosts may assist in delivering and/or removing meal trays in the event of a backlog or other delay. In performing their duties, Hosts regularly have business contact with tray passers and unit clerks, both classifications which are currently represented by the Union.

Based upon the foregoing, it is clear that Hosts are not required to and in fact do not possess the educational background, training, licensing or certification requisite to find that they are technical employees under Board precedent. Thus Hosts are not required to have any education or experience beyond "knowledge of health care food service and working in a customer service oriented environment." Additionally Hosts do not work in non-patient areas such as labs or technical departments, factors recognized by the Board to be indicative of technical employee status. Rather Hosts work directly in patient areas and have frequent job related interaction with other non-professional employees. Nor do their jobs require the use of

independent judgment sufficient to render them technical employees.⁸ Accordingly, the Employer's Hospitality Hosts are properly included in voting unit.

ii. Patient Care Technicians (PCT)

Prior to 1995, the Employer utilized CNAs to provide nursing care to patients under the supervision of a registered nurse (RN). CNAs are included in the Unit currently represented by Petitioner. CNAs were responsible for assisting patients with activities of daily living including bathing, eating and hygiene. Additionally, CNAs monitored and recorded vital signs and weights, measured and recorded basic liquid intake and output, and assisted in collecting specimens. CNAs were also responsible for stocking and distributing supplies and monitoring and maintaining a clean and organized patient care unit. In recent years, the Employer substantially reduced the number of employees in CNA positions and replaced them with employees now classified as PCTs and PCT IIs. The Employer's stated goal in taking this action was to respond to a shortage of registered nurses by relieving them of some of their more routine duties so they may devote more time to complex tasks. Currently the Employer employees about 174 PCTs assigned throughout the clinical areas of the Employer's facility. Additionally, about 10 PCTs and 20 PCT IIs are assigned to the emergency and ambulatory surgery areas.

PCTs are not required to have any post-secondary education or advanced degrees. PCTs are not required to possess any certification, registration or license. PCTs are required to have a high school diploma or equivalent (GED), and preferably some prior experience in an acute care setting as a CNA, PCT, EMT, paramedic, nursing or medial student.

After being hired, PCTs undergo in-house training provided by the Employer's nurses over the course of about ten work days. This training is comprised of various lectures covering overall employee orientation and various practical skills such as CPR, orthostatic blood pressure and pulse, assisting with obtaining a 12-lead EKG, assisting with wound care and dressing application, initiating and applying telemetry monitoring, performing oral suctioning, managing the Foley catheter (obtain sterile specimens, discontinue the Foley), discontinuing IVs and heparin locks, preparation and set up a tube feeding system, and accessing the hospital computer system. In addition to lectures, newly hired PCTs are given the opportunity to practice the newly learned skills and are required to pass a practical demonstration validating that they have sufficiently mastered the tasks. Upon completion of the training, PCTs are required to pass an exam created by the Employer covering the information learned during the 10 days of training.

The duties of the PCT and PCT II are identical with the sole exception that PCT IIs possess phlebotomy skills (drawing blood) that PCTs do not. A PCT cannot perform any invasive technique on a patient. The only invasive technique performed by PCT IIs is the

⁸ After describing the Hosts' job functions as detailed above, Diane Sowa, the Employer's Clinical Nutrition Manager identified the nutrition screening, ordering nourishment (snacks), calorie count and nutritional follow up as requiring the use of independent judgment. However the evidence makes clear that Hosts merely follow prescribed guidelines in performing these duties and have no independent authority to take any action which contradicts decisions made by dieticians, nurses, physicians or other professionals.

drawing of blood. PCTs earn an hourly wage rate ranging from \$11.83 to \$17.15. PCT IIs earn from \$12.85 to \$18.75. PCTs work round the clock shifts.

Upon completion of training, the PCT is assigned to a patient unit to provide patient care under the direction of a registered nurse. During the course of their duties, PCTs interact regularly with other non-professional service employees currently represented by Petitioner including unit clerks, transporters, environmental service employees and food service attendants (tray passers). PCTs may not use all of their newly learned skills on the job. Their utilization depends on the nature of their job assignment at the Employer's facility.

Debra Thomeson has worked for the Employer as a PCT since 2002 and has undergone all of the training provided by the Employer. Thomeson has a GED and a CNA certificate which she earned after a 10 week course at a community college. Thomeson typically is assigned to work on a "medical surgical floor" which receives "all kinds of patients". Typically Thomeson is responsible for 12 – 13 patients at a time. Thomeson estimated that approximately 60% of her duties involved helping patients with "activities of daily living" (ADLs) which include bathing, assistance in going to the bathroom, getting dressed and eating. Her daily duties also include taking and recording patient vital signs such as blood pressure, temperature and pulse. Thomeson also regularly performs "Accuchecks" which she described as a glucose test for diabetic patients wherein she pricks the end of the patient's finger, and then puts a drop of that blood on a testing strip which is read by the glucometer which lists the patient's glucose level. Thomeson is responsible for responding to patient call lights and otherwise checking on patients to ensure that their needs are met. Thomeson regularly works with unit clerks, transporters, housekeeping employees and tray passers during the course of her shift. Each of those classifications is currently represented by Petitioner. Additionally, Thomeson regularly performs tasks performed by these classifications such as transporting patients, cleaning of spills and/or passing meal trays.

Thomeson explained that she seeks out the assistance of a registered nurse when faced with a non-routine situation. Thomeson gave examples of these kinds of situations including an instance when she sought out a registered nurse to assist in placing cardiac telemetry monitor leads on an obese patient. This system monitors a patient's heart rate. Thomeson explained that when a patient is obese, it makes a difference as to where to place the leads. Thomeson explained, rather than assume anything; she would consult with a nurse about the best place to attach the leads. Thomeson gave another example involving application of a "Duoderm dressing". Thomeson estimated that she performs this task about twice a week. Thomeson explained that when one of her patients needs this type of dressing, she always likes her nurse to examine the area which needs the dressing. Thomeson explained that she never applies the dressing without having a nurse inspect the area that she is covering up.

Utilizing the Board's criteria for technical employee determinations, it is clear that neither PCTs nor PCT IIs possess the education or technical training and skills to warrant their classification as technical employees. Thus, as discussed above, PCTs are only required to have a high school education and unspecified amount of clinical training to be hired. PCTs are not

required to be certified licensed or registered.⁹ Additionally, PCTs are not scheduled to work only during daytime hours in non-patient areas such as labs or technical departments, other factors considered by the Board to be indicative of technical employee status. Rather, PCTs are scheduled to work round the clock in patient areas and have frequent interchange with other non-professional employees. Finally, the duties performed by PCTs do not require the use of independent judgment. Rather, as discussed above they involve non skilled basic abilities which can be readily learned through completion of the Employer's ten day training session. Based upon the foregoing, I find that the Employer's PCTs and PCT IIs are not technical employees and will be included in voting unit.

IV. Direction of Election

An election by secret ballot shall be conducted by the undersigned among the employees in the voting group found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those employees in the voting group who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **Health Care, Professional, Technical, Office, Warehouse and Mail Order Employees Union, Local 743, International Brotherhood of Teamsters**.

If a majority of valid ballots are cast for Health Care, Professional, Technical, Office, Warehouse and Mail Order Employees Union, Local 743, International Brotherhood of Teamsters, they will be taken to have indicated the employees' desire to be included in the existing unit currently represented by the Health Care, Professional, Technical, Office, Warehouse and Mail Order Employees Union, Local 743, International Brotherhood of Teamsters. If a majority of valid ballots are not cast for representation, they will be taken to have indicated the employees' desire to remain unrepresented.

⁹ In formulating its Healthcare rules, the Board specifically noted that technical employees have significant additional education and/or training beyond high school and most are certified (usually by passing a national exam), licensed, or required to register with a state authority. (284 NLRB at 1554).

V. Notices of Election

Please be advised that the Board has adopted a rule requiring election notices to be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An employer shall be deemed to have received copies of the election notices unless it notifies the Regional Office at least five working days prior to 12:01a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

VI. List of Voters

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is directed that 2 copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this Decision. *North Macon Health Care Facility*, 315 NLRB 359, fn. 17 (1994). The Regional Director shall make this list available to all parties to the election, but only upon the Petitioner's indication that it wishes to proceed to an election. In order to be timely filed, such list must be received in Region 13's Office, 209 South LaSalle Street, 9th Floor, Chicago, Illinois 60604, on or before **Thursday, February 9, 2006**. No extension of time to file this list will be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

VII. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street NW, Washington, DC 20005-3419. This request must be received by the Board in Washington by **February 16, 2006**.

DATED at Chicago, Illinois this 2nd day of February, 2006.

Roberto G. Chavarry, Regional Director
National Labor Relations Board
Region 13
209 South LaSalle Street, 9th Floor
Chicago, Illinois 60604

CATS –UntRE (Unit – Residual)
470-8800; 470-8840-3300; 440-1760-3420; 440-1760-4020